

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Dorothy A. Rice, :  
Petitioner :  
 :  
v. :  
 :  
Unemployment Compensation :  
Board of Review, : No. 406 C.D. 2008  
Respondent : Submitted: August 15, 2008

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge  
HONORABLE RENÉE COHN JUBELIRER, Judge  
HONORABLE JOHNNY J. BUTLER, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION  
BY JUDGE McGINLEY

FILED: September 11, 2008

Dorothy A. Rice (Claimant) petitions for review of the order of the Unemployment Compensation Board of Review (Board) which affirmed the referee's denial of benefits under Section 402(b) of the Unemployment Compensation Law (Law).<sup>1</sup>

The facts, as initially found by the referee and adopted by the Board, are as follows:

1. For purposes of this appeal, the claimant was last employed on September 25, 2007, as a full-time housekeeping supervisor for Wilmac Corporation, earning \$15.64 per hour.
2. On September 25, 2007, the claimant was called into a meeting with her supervisor and an individual from the corporation.

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<sup>1</sup> Act of December 5, 1936, Second Ex. Sess. P.L. (1937) 2897, *as amended*, 43 P.S. §802(b).

3. The claimant was instructed by the Operating Manager from corporate that her performance was not adequate.
4. The performance issues involved the cleaning of flooring within the facility.
5. The claimant did not agree with the supervisor's criticism.
6. The claimant was asked to provide schedules showing that the work would have been completed.
7. The claimant left the meeting and when she returned with the schedules, she voluntarily submitted her 30-day resignation.
8. On September 25, 2007, the claimant resigned from her position due to dissatisfaction with her supervisor's criticism.
9. On September 25, 2007, the claimant was asked to leave the facility in lieu of her 30-day notice.

Referee's Decision, December 17, 2007, (Decision), Findings of Fact Nos. 1-9 at 1.

The Board affirmed<sup>2</sup> and agreed with the referee's reasoning:

[C]laimant voluntarily resigned her position due to her dislike of supervisory criticism. The claimant credibly testified that if the meeting on September 25, 2007, had not occurred, she would have remained employed with Wilmac Corporation. Continuing work was available. The claimant credibly testified that she had a difference of opinion with the supervisor from the company's corporate office. Such a difference of opinion does not

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<sup>2</sup>

Claimant requested reconsideration which the Board denied.

constitute a necessitous and compelling cause for leaving one's employment, and benefits must be denied.

Decision at 2.

Claimant contends that the Board committed an error of law when it affirmed the referee's determination that Claimant failed to prove a necessitous and compelling reason for leaving employment and that the Board's decision was not supported by substantial evidence.<sup>3</sup>

The issue of whether a termination of employment is voluntary is a question of law subject to this Court's review. The failure of an employee to take all reasonable steps to preserve employment results in a voluntary termination. Westwood v. Unemployment Compensation Board of Review, 532 A.2d 1281 (Pa. Cmwlth. 1987). An employee voluntarily terminating employment has the burden of proving that such termination was necessitous and compelling. The question of whether a claimant has a necessitous and compelling reason to terminate employment is a question of law reviewable by this Court. Willet v. Unemployment Compensation Board of Review, 429 A.2d 1282 (Pa. Cmwlth. 1981). Good cause for voluntarily leaving one's employment results from circumstances which produce pressure to terminate employment that is both real and substantial and which would compel a reasonable person under the circumstances to act in the same manner. Philadelphia Parking Authority v.

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<sup>3</sup> This Court's review in an unemployment compensation case is limited to a determination of whether constitutional rights were violated, errors of law were committed, or essential findings of fact were not supported by substantial evidence. Lee Hospital v. Unemployment Compensation Board of Review, 637 A.2d 695 (Pa. Cmwlth. 1994).

Unemployment Compensation Board of Review, 654 A.2d 280 (Pa. Cmwlth. 1995).

Claimant asserts that she was interrogated and harassed by the corporate representative, Nancy York (York), and when challenged about the condition of the floors was denied the opportunity to obtain her records and to have some of her staff members explain what procedures they followed. She asserts that she was told that if she did not agree with the corporate representative's version of the facts she would be replaced in thirty days. Claimant asserts there was no one else in the corporate hierarchy to inform concerning the harassment.

Claimant testified that her supervisor, Eileen Falugi (Falugi), and York questioned her about the condition of the floors in her area:

I was called into a meeting. The information was not proceeded [sic] as far as investigating. . . so therefore I didn't agree with what she was saying, my supervisor [Falugi], and someone down in the corporate office [York]. Later she made some statements to say that if I didn't agree with her that she would get somebody to come in and show me what to do and I said to her then . . . she can do that if that's what she needed to do and then I told her I still didn't agree because she didn't investigate. Everything she was saying to me was not correct. I didn't have any witnesses to verify what I was saying . . . .

Nancy York was interrogating me, harassing me really. She kept telling me that I should agree with her and I kept telling her that no I can't. . . . She wouldn't have anybody to come in there to sit with me, so then she asked for my schedules and I said I would go get the schedules. I went and got the schedules. I asked her if she was done with the meeting. She said yes. So, before

I left she said if I didn't agree with her that within 30 days she would get somebody in there to agree with her. . . . At that particular time, I knew I was being harassed, ever since I had that position, I was being harassed by her. . . . Every time we had meetings, I was always the center of attention. I made up my mind that I was so stressed that I couldn't take it no [sic] more, that I had to leave. So, when I came back with my schedules, I gave her my 30-day resignation because we had to give 30 days, all department heads.

Notes of Testimony, December 13, 2007, (N.T.) at 4-5.

In Spadaro v. Unemployment Compensation Board of Review, 850 A.2d 855 (Pa. Cmwlth. 2004), this Court addressed a similar situation. David Spadaro (Spadaro) had been employed with CDL Medical Technologies, Inc. (CDL). CDL hired a new supervisor who possessed educational qualifications which Spadaro did not have. Spadaro and the new supervisor did not get along, and Spadaro's job performance began to deteriorate appreciably. After the supervisor urged the owner of CDL to assign Spadaro to set up and repair equipment without any supervisory duties, "Spadaro then began to tell the supervisor as well as employees that he was going to resign." Spadaro, 850 A.2d at 857. After a discussion with the supervisor concerning Spadaro's new job assignment, Spadaro "became upset and told the supervisor that he could not take it anymore and that he quit." Spadaro, 850 A.2d at 858. Spadaro then "saw the president of the company and told him that he could not take the supervisor anymore." Spadaro, 850 A.2d at 858. The Board determined that Spadaro voluntarily terminated his employment without a necessitous and compelling reason. Spadaro, 850 A.2d at 857-858.

Spadaro petitioned for review with this Court. One of the issues he raised was that he had a necessitous and compelling reason to resign due to his conflict with the supervisor. This Court affirmed:

In the present controversy, the Board found that Claimant [Spadaro] told his supervisor that he quit. The Board also determined that Claimant [Spadaro] later told the president of the company that he could not take the supervisor anymore. A review of the record reveals that there is nothing to support Claimant's [Spadaro] position that Morosko [the supervisor] made his working conditions intolerable or that Morosko [the supervisor] acted in a profane or abusive manner toward Claimant [Spadaro]. Mere dissatisfaction with one's working conditions is not a necessitous and compelling reason for terminating one's employment.

Spadaro, 850 A.2d at 860.

Here, Claimant had a disagreement with her superiors over her work performance, as did Spadaro. Although Claimant asserted that she was harassed, there is nothing in the record to indicate that her supervisors engaged in harassment. As this Court stated in Spadaro, mere dissatisfaction with working conditions does not constitute a necessitous and compelling reason for terminating employment. This Court agrees with the Board that Claimant's difference of opinion with her supervisors did not constitute a necessitous and compelling cause for leaving her employment.<sup>4</sup>

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<sup>4</sup> Although Claimant asserts that York told her "if I didn't agree with her that within 30 days she would get somebody in there to agree with her," N.T. at 5, Claimant was not in imminent danger of being fired. An employer's language must possess the immediacy of a firing in order for that language to be interpreted as a discharge. Sweigart v. Unemployment Compensation Board of Review, 408 A.2d 561 (Pa. Cmwlth. 1979). If an employee resigns in order to avoid the chance of being fired, that employee is deemed to have voluntarily quit. Scott **(Footnote continued on next page...)**

Claimant next contends that the Board's decision was not supported by substantial evidence because "[t]he essence of her testimony was not that she was unable to deal with the 'criticism' but that she did not have a fair opportunity to correct the facts upon which the criticisms were based." Claimant's Brief at 14.

Claimant further asserts:

She was not even given the benefit of the 30 day period within which the parties might have been able to work through the issues, but rather was 'asked' by the company's Vice President to leave that very day due to a 'conflict of interest,' the meaning of which was never fully explained to her.

Claimant's Brief at 14. Claimant testified that when she returned to the meeting with the schedules that supported her position, she decided to resign. She had the opportunity to present her explanation but chose not to take advantage of the opportunity. Claimant chose to resign and gave thirty days notice. Employer chose to accept her resignation as of the day it was made.<sup>5</sup>

Accordingly, this Court affirms.

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BERNARD L. McGINLEY, Judge

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**(continued...)**

v. Unemployment Compensation Board of Review, 437 A.2d 1304 (Pa. Cmwlth. 1981). Here, York's comments did not have the immediacy of a firing.

<sup>5</sup> Employer paid Claimant for the thirty day notice period.

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**ORDER**

AND NOW, this 11th day of September, 2008, the order of the Unemployment Compensation Board of Review in the above-captioned matter is affirmed.

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BERNARD L. MCGINLEY, Judge